

National Labour Law Profile: Trinidad and Tobago

Contributed by Avril Rahim

Updated July 2004 by Natacha Wexels-Riser¹ - Maîtrise in International Law, Diplôme d'Etudes Supérieures Spécialisées (Master of Laws) in International Administration (Paris II, Panthéon-Assas), lectured in International Law, Paññasastra University of Cambodia.

General Information

Officially, the Republic of Trinidad and Tobago, is an island state of the Caribbean West Indies. It is situated between the Caribbean Sea and the North Atlantic Ocean, northeast of Venezuela, with a total land area of 1,978 square miles (5,123 square sq km). Trinidad, the larger island, comprises 1,841 square miles. It is seven miles (11 kilometres) at the nearest point from the Venezuelan coast, from which it is separated by the Gulf of Paria and two narrow channels, where there are several small islands and rocks. Tobago, the smaller island, with an area of about 115 square miles, lies in the Atlantic 19 miles to the northeast of Trinidad.

In 2004 the country's population was estimated at slightly less than 1,100,000 inhabitants. The petroleum industry dominates the economy, which is thus subject to fluctuations in the global oil market. Tourism and manufacturing are also important sources of revenues. Privatization of some state-owned enterprises was undertaken during the 1990s.

Historical background

Trinidad was sighted by Christopher Columbus in 1498. After years of Spanish rule, the island was seized by the British in 1797. Tobago, after changing hands 22 times, was ceded to Britain in 1814, and attached to Trinidad in 1888, to form a single British Crown colony.

After the abolition of slavery in 1838, a need for cheap labor prompted the British to introduce East Indians to the islands as indentured laborers. Migration from Madeira, Sierra Leone, Europe, India and China followed this introduction, accounting for the present ethnic mix in population: East Indian (a local term - primarily immigrants from northern India) 40.3%, black 39.5%, mixed 18.4%, white 0.6%, Chinese and other 1.2%. The indentured labor system lasted until 1917.

The depression of the 1930s led to a series of strikes and riots, strengthening a growing labor movement on the islands. In 1946, the British granted universal suffrage and took measures to institute self-government. In 1962, Trinidad and Tobago achieved full independence and joined the Commonwealth.

In 1976, a Republican constitution was adopted, replacing the Queen as Head of State with a President elected by the Parliament. Eric Williams became Prime Minister and remained in this post until his death in 1981. His party, the People's National Movement (PNM) won every general election from independence until 1986, when

¹ Natacha Wexels-Riser: Maîtrise in International Law, Diplôme d'Etudes Supérieures Spécialisées (Master of Laws) in International Administration (Paris II, Panthéon-Assas). Lectured in International Law, Paññasastra University of Cambodia.

the National Alliance Reconstruction (NAR), a coalition led by Arthur Robinson, formed a government for the first time. The United National Congress (UNC), led by Basedo Panday, narrowly won the elections in 1995 and 2000, but was brought down by a corruption scandal.

After the 2001 elections gave the UNC and Patrick Manning's PNM 18 seats each, the government was almost paralyzed for 12 months, until new elections were called in 2002, and won by the PNM. Patrick Manning is the Prime Minister of Trinidad and Tobago.

The President of the Republic has been Professor George Maxwell Richards since elections in 2003.

Constitutional Framework

The Republic of Trinidad and Tobago has a written [Constitution](#) which was enacted in 1976 (Chapter 1:01 of the Laws of Trinidad and Tobago). The Constitution is the supreme law of the land, in that no law may amend, abridge or infringe the Constitution without the requisite majority of Parliament.

The system of government in Trinidad and Tobago is a Parliamentary democracy based on the Westminster system. There are three arms of State: the Executive, the Legislature and the Judiciary. The establishment, function and powers of each of these arms are provided for in the Constitution.

The Executive power

The President is the constitutional Head of State by section 22 of the Constitution, and Commander in Chief of the armed forces. He or she is elected by an Electoral College comprising of all members of the bicameral Parliament by secret ballot.

The Executive power is vested in the Prime Minister and his or her Cabinet, who exercise general direction and control in respect of the governance of Trinidad and Tobago.

The Legislative power

Parliament is charged with the responsibility of making laws for the peace, order and good government of the country. This is done via Bills that must be passed by both the House of Representatives and the Senate and must receive the President's assent before they become law.

The Parliament of Trinidad and Tobago consists of two chambers, the House of Representatives and the Senate. The Senate or Upper House is made up of thirty-one (31) members, 16 appointed by the President on the advice of the Prime Minister, 6 on the advice of the leader of the Opposition, and 9 at the discretion of the President. The House of Representatives or Lower House consists of thirty-six (36) members (34 for Trinidad and 2 for Tobago), one for each constituency, and the Speaker, whose job it is to keep order in the House. The Parliament, unless sooner dissolved in

accordance with the Constitution sits for five years, after which period general elections are held. Suffrage is universal from the age of 18.

Since 1980, Tobago has had its own 15-seat House of Assembly, with 12 members elected and 3 selected by the ruling party. Tobago was granted full internal self-government by the national government in 1987.

The Judiciary

In Trinidad and Tobago there exists a Supreme Court of Judicature comprising of the High Court and the Court of Appeal, both superior courts of record. Under certain circumstances, final appeals go to the Judicial Committee of the Privy Council of the United Kingdom. There are plans to replace this avenue of appeal with a Caribbean Court of Justice, which would serve a number of Caribbean countries.

With the exception of the Chief Justice, who is appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition, all Judges of the Supreme Court are appointed by the President acting in accordance with the advice of the Judicial and Legal Service Commission. The judiciary is meant to be and remains an independent arm of the State.

While the Industrial Court established under the Industrial Relations Act, Chap. 88:01 is deemed to be a superior court of record, it is not considered part of the Judiciary.

Fundamental Rights Guaranteed by the Constitution

The Constitution of Trinidad and Tobago recognizes and guarantees citizens certain basic human rights and freedoms, such as the right to life, liberty and security, the right to equality before the law and the right to freedom of expression. The right to freedom of association and assembly is also a fundamental right protected by the Constitution. This right translates into the right of a person to form and join a trade union or association. There is no constitutional right to bargain collectively or to strike, (*Collymore and Another v. The Attorney General (1969) 15 WIR 229*). The [Industrial Relations Act](#) (hereinafter referred to as the IRA) does however make provisions for collective bargaining between employers and workers and allows industrial action, including strike action, once taken in accordance with the IRA.

A list of trade unions established in the country is available in the [webpage](#) of the ILO Subregional Office for the English Speaking Caribbean countries. Employers also have the right to form and join their own associations. In Trinidad and Tobago the main employers' association is the [Employers' Consultative Association](#).

Labour Regulation

General regulation

The general industrial relations policy in Trinidad and Tobago is based on voluntary collective bargaining between employers and workers, via their representative associations, for the settlement of terms and conditions of employment. The employment relationship in Trinidad and Tobago may be governed by either or a

combination of both industrial relations principles and practices, and legislation. While the Government has ratified several ILO Conventions, including the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), these Conventions only become effective when they are legislatively implemented. A 144 Tripartite Committee, comprising all of the social partners, trade unions, employers, and Government, is in operation in Trinidad and Tobago with the responsibility of considering and recommending the ratification of ILO Conventions.

State employees include civil servants, teachers and members of the Protective Services (Fire, Police and Prison Services). The employment relationship between the State and its employees is governed generally by legislation, which makes provisions for terms and conditions of employment including recruitment, hours of work, leave entitlements, payment of remuneration, pensions, allowances and other benefits. There is legislation which deals specifically with each group, such as the [Civil Service Act, Chap 23:01](#) for all civil servants, the Police Service Act, Chap. 15:01, as revised by the [Police Service Bill \(2003\)](#), the Fire Service Act, Chap. 35:50 and the [Education Act, Chap 39:01](#) for teachers.

The representative associations of monthly paid State employees may bargain collectively with the Chief Personnel Officer, who is deemed to be the employer of State employees under the IRA. The subject of these negotiations include wage increases, travelling and other allowances and leave entitlements. When agreement is reached on a matter the parties enter into a Memorandum of Agreement. Where this Memorandum affects existing legislation, the legislation is accordingly amended to give effect to the agreed position. The terms and conditions of employment of daily paid State employees are contained in collective agreements entered into by their recognized majority union and the Chief Personnel Officer after collective bargaining.

In the private sector collective bargaining is generally engaged between individual companies with the respective recognized majority unions, rather than on an industry wide basis. Many companies have industrial relations or human resources managers who handle negotiations. Companies which do not have industrial relations professionals may hire private negotiators or practitioners to conduct negotiations on their behalf. Trade unions have negotiators on their staff.

Those aspects of the employment relationship which could not be left to collective bargaining such as employee health and safety, minimum age of employment and workers' compensation, retrenchment and severance benefits and maternity leave are set down in legislation which bind the State and private employers. The Factories Ordinance (soon to be replaced by the [Occupational Safety and Health Act](#), assented on 30 January 2004, but still awaiting proclamation, and the [Employment Injury and Disability Benefits Bill](#)) sets standards for employee health and safety at the workplace. The Workmen's Compensation Act, to be replaced by the [Employment Injury and Disability Benefits Bill](#) provides compensation where employees are injured on the job, while the [Retrenchment and Severance Benefits Act](#) guarantees the payment of severance pay to retrenched employees. The [Maternity Protection Act](#) provides maternity leave and related benefits to female employees. The Government has also recognized the need to implement legislation which sets minimum terms and conditions of employment so that employees are guaranteed a basic level of rights and protection. The IRA sets the stage for the practice of industrial relations in Trinidad

and Tobago. It is the legal framework within which parties bargain collectively, settle disputes and come before the Industrial Court for arbitration.

The Industrial Relations Act

During the 1950s and early 1960s the industrial relations climate in Trinidad and Tobago was growing tense with the development of the trade union movement. There was an increasing number of strikes and labour disputes which threatened the economic growth and productivity of the country. The Government could no longer delay in taking legislative action to regulate the relations between unions, workers and employers. As a result the Industrial Stabilisation Act, 1965, was enacted. This Act introduced the concept of compulsory arbitration to Trinidad and Tobago by the establishment of the Industrial Court. The main function of this Court was to intervene to prevent and settle industrial disputes between employers and their union represented workers.

The Industrial Stabilisation Act was later repealed and replaced by the [Industrial Relations Act](#), 1972, Chapter 88:01 of the Laws of Trinidad and Tobago. The IRA provides for the following:

free collective bargaining between employer and workers through their representative associations,
the development of a peaceful and expeditious procedure for the settlement of disputes,
the establishment of the Industrial Court,
the recognition and registration of trade unions,
the freedom to be represented by a trade union and the right not to associate, and
industrial action which may be taken by both employer and employee.

Provision is made for a Tripartite industrial relations advisory committee which has the responsibility of reviewing the IRA and making recommendations to the Minister of Labour. This way the Act may keep up with industrial relations trends.

In order to seek the protection and rights afforded by the IRA, a person must fall within the definition of worker set out in the Act. In the IRA a "worker" is defined as:

any person who has entered into or works under a contract with an employer to do any skilled, unskilled, manual, technical, clerical or other work for hire or reward, whether the contract is expressed or implied, oral or in writing, or partly oral and partly in writing, and whether it is a contract of service or apprenticeship or a contract personally to execute any work or labour;
any person who by any trade usage or custom or as a result of any established pattern of employment or recruitment of labour in any business or industry is usually employed or usually offers himself for and accepts employment accordingly; or
any person who provides services or performs duties for an employer under a labour only contract, within the meaning of subsection (4)(b); and includes
any such person who -
has been dismissed, discharged, retrenched, refused employment, or not employed, whether or not in connection with, or in consequence of, a dispute; or
whose dismissal, discharge, retrenchment or refusal of employment has led to a dispute; or

any such person who has ceased to work as a result of a lockout or of a strike, whether or not in contravention of Part 5,
as the case may be.

The following categories of workers are, however, excluded from the scope of the IRA:

a public officer, as defined by section 3 of the Constitution;
a member of the Defence Force or any ancillary force or service thereof, or of the Police, Fire or Prison Service or of the Police Service of any Municipality, or a person who is employed as a rural constable or estate constable;
a member of the Teaching Service as defined in the Education Act, or is employed in a teaching capacity by a university or other institution of higher learning;
a member of staff and an employee of the Central Bank established under the Central Bank Act;
a person who, in the opinion of the Board -
is responsible for the formulation of policy in any undertaking or business or the effective control of the whole or any department of any undertaking or business; or
has an effective voice in the formulation of policy in any undertaking or business;
employed in any capacity of a domestic nature, including that of a chauffeur, gardener or handyman in or about a private dwelling house and paid by the householder;
an apprentice within the meaning of the Industrial Training Act.

The Court has the responsibility of deciding whether a person is a worker under the IRA. The fact that domestic workers have been excluded by the definition of 'worker' in the IRA has been an issue of contention for their association. The Parliament took note and both the [Minimum Wages Order](#), Legal Notice No. 40 of 1999 and the [Maternity Protection Act](#), No.4 of 1998 included domestic workers as employees, guaranteeing them the same rights and benefits as other workers.

Contract of Employment

Employment relationship

A contract of employment in Trinidad and Tobago may be oral or written, express or implied. Common law is applied by the Industrial Court when determining the question of whether a contract of or a contract for service exists between a person and an employer. When determining this question the Court may consider in addition to do the 'control test', the 'organizational test' and the 'economic reality test'. The test enunciated by Mc Kenna J in the English case of *Ready Mixed Concrete (South East) Ltd. v. Minister of Pensions and National Insurance* [1968] 2QB 497, [1968] 1All ER 433 has been approved and applied by the Industrial Court when determining whether a contract of or for service exists, for example in *IRO 10-13 et al of 1989, and Transport and Industrial Workers Union and Neal and Massy Industries Limited* (1994) . It is a question of fact in each case and the Court will go beyond any written contract to determine the true nature of the relationship.

When a person makes a claim under any piece of labour legislation that provides rights and benefits for workers, the Industrial Court will first decide whether the person falls within the definition of 'worker' or 'employee' in the particular Act. The

approach of the Court when determining this question was stated in the case of *Oilfields Workers' Trade Union and Schlumberger Trinidad Inc. RSBD No. 4 of 1996*,

..that such legislation is to be seen as an instrument of social engineering and that the Court must not lose sight of its function to ensure that the intended beneficiaries of such social engineering are not deprived of their rights by reason of their relatively inferior bargaining strength.

The terms and conditions under which an employee works may be contained in an individual contract of employment between the employee and employer, a collective agreement negotiated by the representative trade union or employee association with the employer or by legislation as is the case with State employees.

Permanent and fixed-term contracts of employment

As a result of structural adjustment of the economy over the past twenty years the pattern of employment in Trinidad and Tobago has veered towards an increasing emergence of fixed term contract employment. This is true in both the public and private sectors. Employers are more willing to sub-contract tasks or projects and to hire on a fixed term basis rather than to employ persons for an indefinite period, which is what prevailed in the past. Employers now want the ability to change labour quickly without much difficulty. This is one aspect of flexibilization of the workforce which is gaining ground in Trinidad and Tobago.

Because employers may be tempted to use contract labour to escape statutory entitlements of workers and obligations imposed by collective agreements, the Industrial Court has had to look beyond the fixed term contract and the claim of independent contractor to discover the reality of the relationship. This occurred in the Schlumberger case (*supra*), where the company claimed that since the worker, who was employed for a period in excess of ten years on consecutive six month contracts, was employed on a fixed term basis, he did not fall within the definition of 'worker' in the Retrenchment and Severance Benefits Act, and was therefore not entitled to severance payment. The Court held that neither the worker nor the employer could contract out of the Act and found that the worker was in continuous employment with the Company despite the six month contracts and was thereby entitled to severance pay.

The practice of employment on a fixed term basis has not found favor with the trade unions. Since fixed term contracts are usually negotiated by the individual worker with the employer, there is no collective bargaining process and the role of the union is ousted. Most workers under a fixed term contract are not unionized. More needs to be done on the part of trade unions to attract persons who work on a fixed term contract basis. These persons include not only construction workers and workers in labour intensive industries, but a growing number of professionals.

Probation

Periods of probation and suspension are only statutorily set down in legislation dealing with the Defence Force, the Civil, Prison, Police and Fire Services. Generally private sector employers are free to determine their own probationary terms and

suspension provisions. Where there is a recognized majority union, that union may negotiate these terms for inclusion into the collective agreement.

Termination of the Contract of Employment

Grounds for termination

Whether a contract of employment is for a fixed term or for an indefinite period it may be terminated by either the employer or the worker. There is no legislation governing termination of contract in general in Trinidad and Tobago, and Common Law applies in the absence of termination provisions in a collective agreement. There may be termination by performance, by expiry of a fixed term, by agreement of the parties or by breach. An employer has the right to dismiss an employee for just cause. The Common Law on summary and constructive dismissal also applies.

Notice of termination

Usually in collective agreements and individual contracts a requirement for notice of termination is stipulated. For monthly paid employees this notice period is usually one month.

The Retrenchment and Severance Benefits Act

The [Retrenchment and Severance Benefits Act](#) was passed to provide severance payments for retrenched employees. In order to qualify for this benefit the employee must fall within the definition of 'worker' in the IRA, with the following added exceptions:

workers with less than one year continuous service;
workers on probation;
casual workers;
seasonal workers;
fixed term workers;
independent contractors.

The procedure for retrenchment is laid down in the Act, with formal notice in writing required to be given by the employer to the worker, the recognized majority union and the Minister of Labour where five or more workers are to be retrenched. Provision is made for consultation between the recognized majority union and the employer to avert or lessen the effects of redundancy. A formula for the payment of severance is contained in the Act, with a stipulation that where more favorable benefits are provided by a collective agreement that applies to the retrenched worker, the collective agreement takes precedence over the Act. The Retrenchment and Severance Benefits Act is one of a few pieces of legislation that allows the non-unionized individual worker who alleges non-compliance with the Act, to take his or her matter to the Industrial Court. The worker may take his or her complaint to the Minister of Labour where it is reported as a trade dispute and dealt with as such according to the provisions of the IRA.

Remedies in case of unjustified dismissal

Where an employee alleges wrongful dismissal he or she may seek union representation and failing settlement, have his or her matter heard and determined by the Industrial Court. Remedies that may be granted by the Court for wrongful dismissal include reinstatement or re-employment, compensation or damages, including exemplary damages in lieu of reinstatement. In assessing compensation or damages the Court is not bound to follow any rule of law, but may make an assessment that is in its opinion fair and appropriate.

Working Time

Hours of work

The hours of work for State employees is provided for by legislation. In the private sector hours of work may be settled in a collective agreement. For employees in general, other than shift workers, the normal hours of work are eight hours a day, usually from 8:00am to 4:00pm, five days a week. The [Minimum Wages Order](#), Legal Notice No.40 of 1999 attempted to set down hours of work for all workers in Trinidad and Tobago, including State employees. The Order stipulates that the normal working day shall not exceed eight hours, exclusive of meal and rest breaks, and the normal working week shall not exceed forty hours. Where workers work only four days in the week the normal work day shall not exceed ten hours. The Order also provides meal and rest breaks for workers. However, the Order only applies to workers who receive an hourly rate of \$10.50 or less, and so unfortunately many workers are excluded.

Unionized workers may rely on their representative associations or trade unions to negotiate fair hours of work on their behalf. However, non-unionized workers who earn more than \$10.50 an hour in an establishment where no collective agreement exists must fend for themselves.

Leave entitlements

There are no statutory leave provisions which apply to workers in general in Trinidad and Tobago. State employees have leave entitlements set out in legislation which deals with each Service. This includes paid vacation leave and usually fourteen days paid sick leave, with three working days bereavement leave where the death occurs in Trinidad and Tobago and five days where it occurs outside.

With the exception of the Police, Prison and Fire Services where special provisions are made since employees are required to work on Sundays and public holidays, all permanent State employees are guaranteed paid public holidays. Where an employee is required to work on a public holiday, where that day is a normal working day the employee is entitled to a day off.

Leave entitlements for Government daily rated workers are provided for in the Collective Agreement between the Chief Personnel Officer and The National Union of Government and Federated Workers, 1999-2001. In both the public and private sectors employees are only eligible for paid vacation leave after having twelve months continuous service. The State also provides for no pay leave to be granted to

employees who wish to further their education and leave where the employee holds a post in a trade union.

In the private sector employers and unions may agree on leave entitlements which become part of a registered collective agreement which is binding on both employer and employees. Where no collective agreement exists paid public holidays, vacation and sick leave are at the discretion of the employer.

Maternity Leave and Maternity Protection

Maternity Leave in Trinidad and Tobago is governed by the [Maternity Protection Act](#), No. 4 of 1998 (hereinafter referred to as the MPA) which binds both private employers and the State. The purpose of the Act is to establish a minimum level of rights and benefits for women workers. It is a provision of the MPA that it shall not apply where any written law, industrial award or collective agreement prescribes conditions more favorable than those specified in the MPA.

Prior to the MPA only legislation relating to the Civil Service, including the Police, Fire and Prison Services contained provisions on maternity leave. Since its enactment the MPA takes precedence over those provisions, except where those provisions are more beneficial to the employee than the MPA.

Under the MPA the definition of an 'employee', who is entitled to protection under the MPA, includes domestic and agricultural workers, and a person working under a contract of apprenticeship, provided the employee has been in the service of the employer for a continuous period of no less than twelve (12) months.

Under the MPA female employees are entitled to thirteen (13) weeks maternity leave (six weeks prior to confinement, 7 weeks after) and one month's pay during such leave. An employee on maternity leave shall have the right to return to work. To qualify for maternity leave, employees must have worked for an employer for a period of no less than 12 months. The employee shall also submit a medical certificate stating the probable date of confinement, as well as a written expression of her intent to return to work after maternity leave.

An employee whose child dies during the period of leave is entitled to the remaining period of leave with pay. Where an employee has not as yet proceeded on maternity leave and has a premature birth where the child dies either at birth or thirteen (13) weeks after, she is still entitled to her full or remaining period of leave with pay. Under the MPA employees are also allowed time off with pay for the purpose of receiving prenatal medical care.

As with the Retrenchment and Severance Benefits Act a non-unionized individual employee who alleges non compliance with the MPA may report her claim to the Minister of Labour where it is deemed to be a trade dispute and dealt with as such under the IRA. An employee is therefore not denied her right of redress, even though she is not a member of a trade union.

Minimum Age and Protection of Young Workers

The Children Act, Chapter 46:01 states that a child under the age of twelve (12) cannot be employed, while a person under the age of fourteen (14) shall not be employed in an industrial undertaking or vessel, and may only be employed in a family undertaking. The Factories Ordinance, Chapter 30 No.2 prohibits the employment of a 'child' who is defined as a person who has not as yet attained the age of fourteen years.

The [Children \(Amendment\) Act, 2000](#), amending the Children Act, changes the definition of a 'child' from a person under fourteen years of age to a person under eighteen years. It defines a 'young person' as a child over the age of fourteen years of age and under the age of eighteen years.

The [Occupational Safety and Health Act](#), assented on 30 January 2004, but still awaiting proclamation, prohibits the employment of young persons on dangerous machines.

The Tripartite Committee established by ILO Convention No.144 is currently considering the ratification of Convention No.138 concerning the minimum age for admission to employment. Until such time, technically the minimum age for employment in Trinidad and Tobago remains at age fourteen (14).

Equal Treatment

The Constitution guarantees citizens the general right to equality of treatment from any public authority in the exercise of any function. [The Equal Opportunity Act, No. 69 of 2000](#) prohibits discrimination of persons on grounds of sex, race, ethnicity, origin, marital status, religion or disability. Part III of the Act deals specifically with employment discrimination. In respect of persons seeking employment, an employer is prohibited from refusing or omitting to offer employment to a person based on the above grounds of discrimination. Also, an employer shall not discriminate against an employee with regard to terms and conditions of employment, opportunities for promotion, transfer or training or any other benefit, facility or service associated with the employment.

There are as yet no statutory provisions concerning sexual harassment and as a result the common law applies. Homosexuality is still a criminal offence with penal consequences. Discrimination on the basis of sexual orientation is thus not prohibited.

To ensure compliance with the Act an Equal Opportunity Commission has been established to work towards the elimination of discrimination by investigating allegations of discrimination, conducting research and educational programs, and providing guidelines to promote equal opportunity and good relations among all persons. There is provision in the Act for the establishment of the Equal Opportunity Tribunal to hear and determine complaints made under the Act, with the power to make an order for the payment of compensation, damages or fines.

However, the [Equal Opportunity Act, No. 69 of 2000](#) was judged unconstitutional in May 2004. An appeal was filed against the decision.

Pay Issues

Minimum wage

The national minimum wage in Trinidad and Tobago, set by the [Minimum Wages Order, Legal Notice No. 40 of 1999](#) is \$7.00 per hour exclusive of gratuities, service charges and commissions. The Order also provides that piece and home workers receive no less than the equivalent of the minimum wage.

Determination of pay

The Minimum Wages Order also sets overtime rates. For the first four hours of overtime the worker shall receive one and one half times the hourly rate. For the next four hours, two times the hourly rate and thereafter three times the hourly rate. For time worked on an off day, two times the hourly rate is payable for the first eight hours, and thereafter, three times the hourly rate.

The order applies only to workers who receive an hourly rate of \$10.50 or less, and does not apply to registered apprentices and trainees in Government approved training programmes.

Protection of wages

Where a worker alleges non-compliance with the Minimum Wages Order, his or her recognized majority union, or any union of which he or she is a member, or he or she themselves may report the matter to the Ministry of Labour under the [Minimum Wages \(Amendment\) Act, No.11 of 2000](#). This report is deemed to be a trade dispute and may be heard and determined by the Industrial Court.

The wages of employees who are not covered by the Minimum Wages Order may be fixed by collective bargaining, or individual employees are free to negotiate their own wage with employers.

Workers' Representation in the Enterprise

While there are no statutory provisions for worker representation in the enterprise, the industrial relations practice, supported by case law of the Industrial Court, entitles unions to appoint a worker as the union representative for a bargaining unit. This representative is sometimes referred to as the shop steward. It is also industrial relations practice that when having discussions with the worker representative on union business the employer must treat him or her not as an employee, but as the representative of the union.

About 22% of the work force is represented by trade unions that have negotiated collective bargaining agreements which set the terms and conditions of their employment.

Trade Union Regulation

Trade Unions in Trinidad and Tobago are regulated by the Trade Unions Act, 1932, Chapter 88:02. Pursuant to this Act trade unions were deemed to be no longer illegal as being in restraint of trade.

Trade unions are required to be registered by the Registrar of trade unions under the Trade Unions Act, and any seven (7) or more members may register a union. The provisions for registration are set out in the Act and include the following requirements:

completed application form with printed copy of rules with the names of officers;
that no other trade union carries an identical name or one so nearly resembling that of the union seeking registration to deceive the public;
that the objects of the union are statutory objects.

Any trade union duly registered under the Trade Unions Act may purchase or lease property which would be vested in its trustees. The Act makes provision for legal action to be taken against any trustee who misuses or misappropriates the union's property.

Any person who is aggrieved by the Registrar's refusal to register a trade union, or by the withdrawal or cancellation of a certificate of registration may appeal the Registrar's decision before the Supreme Court. The Registrar may not withdraw or cancel a certificate of registration arbitrarily, but only in the circumstances outlined in the Act.

While the Constitution guarantees for every citizen of Trinidad and Tobago the right to join a trade union, the Industrial Relations Act acknowledges a person's right not to be a member of a trade union or other employee organization. Where a person is a member of a trade union, he or she has a right to take part in the activities of the union and to become an official of that union.

The Registration, Recognition and Certification Board, established by the IRA is responsible for determining and certifying recognized majority unions. Both the employer and the recognized majority union are obliged to treat and enter into negotiations with each other in good faith.

Collective Bargaining and Agreements

Collective bargaining regulation

In Trinidad and Tobago collective bargaining takes place between company and recognized majority union rather than on an industry wide basis. The Government as an employer also bargains collectively.

The process of collective bargaining is regulated by Part IV of the [Industrial Relations Act](#) (IRA). The IRA states that the parties to a collective agreement shall be the recognized majority union, and the employer or the successor to either the recognized majority union or the employer.

Collective bargaining procedures

The purpose of collective bargaining is to establish terms and conditions of employment for a bargaining unit, agreed between the recognized majority union and the employer, into a collective agreement. Where a recognized majority union and an employer agree to initiate negotiation of a collective agreement they must notify the Minister of Labour. When parties have settled upon a collective agreement it must be registered by the Industrial Court either through the Minister or by either party to the agreement. Only upon registration does the collective agreement become binding upon the parties and enforceable by the Industrial Court. A collective agreement may be made for a period of not less than three (3) years and no more than five (5) years.

Application of collective agreements

The IRA requires that collective agreements contain effective provisions for the settlement of disputes, including differences between the parties arising out of the interpretation, application and violation of collective agreements, with the Industrial Court as the final arbiter. Collective agreements usually also contain provisions for wages, leave entitlements, severance pay, travelling and other allowances.

Any collective agreement which governs a bargaining unit applies to every worker in that bargaining unit, whether that worker is a member of the recognized majority union or not. The provisions of a collective agreement become the terms and conditions of employment of each employee's contract whether or not that employee even knows of the existence of the agreement. Any provision in a collective agreement which limits the application of the IRA or which promotes preferential treatment for members of a particular union is void. Once a collective agreement has been registered every member of the respective bargaining unit is entitled to be protected by it.

The IRA also provides that where a trade union has attained certification as the recognized majority union the employer must recognize that union and is obliged to meet and treat with that union. Both parties have a duty to bargain in good faith.

Collective and Individual Labour Disputes: the disputes procedure

Report to the Ministry of Labour

After parties have undergone the disputes procedure set out in their collective agreements, and the dispute remains unresolved, they may report the matter to the Minister of Labour as a trade dispute under the Disputes Procedure set out in Part V of the [IRA](#). The Disputes Procedure set out in the IRA establishes a system that allows parties to treat with their dispute in a structured framework of conciliation, culminating in arbitration before the Industrial Court, that is if conciliation does not result in resolution.

Under the Disputes Procedure only the following entities may report a trade dispute to the Minister:

the employer;
the recognized majority union;

where there is no recognized majority union, any trade union of which the worker(s) who are parties to the dispute are members in good standing.

An individual worker is incapable of being a party to a trade dispute under the IRA. Therefore, an individual worker has no locus standi before the Industrial Court, under the IRA. Initially the legislation was structured so as to encourage and support trade union membership and development. It is without doubt that it would be in the interest of both employer and union to restrict an individual worker's right to come before the Industrial Court, but it is the duty of the Legislature to safeguard the rights of workers, especially in light of the increase in non-unionized contract employment. It was with this duty in mind that the Legislature passed the [Retrenchment and Severance Benefits Act](#), No. 32 of 1985 and the [Maternity Protection Act](#), No. 4 of 1998. Both these Acts give the non-unionized individual worker an avenue by which he or she may bring his or her grievance before the Industrial Court. Both Acts allow the worker to report his or her grievance to the Minister as a trade dispute to be dealt with according to the provisions of the IRA.

Further, a trade union, other than a recognized majority union may only represent a worker in a *rights* dispute, that is a dispute emanating out of existing terms and conditions of employment. *Interest* disputes, that is, disputes concerning the formulation of terms and conditions of employment may only be handled by a recognized majority union.

Once a trade dispute is reported to the Minister of Labour he or she may;

remit the dispute back to the parties where appropriate settlement procedures were not observed;

proceed to have the matter conciliated before a conciliator appointed by the Ministry of Labour; or

refer the matter directly to the Industrial Court.

Unrepresented workers cannot report a dispute to the Minister and consequently cannot take strike action in accordance with the act.

Conciliation

Conciliation before the Ministry is more along the lines of what is commonly accepted as mediation, since parties come before an independent third party who helps them to explore settlement options and possibilities. Conciliation at the Ministry may be considered to be compulsory conciliation, since it is only where the Minister is satisfied that conciliation would serve no useful purpose or where either party fails to enter into conciliation in good faith, that he or she will send the matter directly to the Court. In practice all matters must go through the conciliation process at the Ministry of Labour. If the matter is not settled at the Ministry, the Minister issues an unresolved certificate by which the matter is referred to the Industrial Court for hearing and determination. Every effort is made to give parties an opportunity to resolve their dispute.

The Special Tribunal

The Special Tribunal is established by the [Civil Service Act, Chap 23:01](#). The purpose of the Special Tribunal is to hear and determine disputes that arise in the Civil Service, Teaching Service, Prison, Fire and Police Services, the Supplemental Police Service and disputes concerning Central Bank employees. The composition of the Special Tribunal is provided for in the IRA. The Special Tribunal consists of the Chairman and two other members of the Essential Services Division. While the Special Tribunal is not a Division of the Industrial Court it does exercise the powers and functions the Court possesses in respect of the essential services. The award of the Special Tribunal is final and binding on the parties.

The Industrial Court

Structure and jurisdiction of the Court

The Industrial Court is divided into two divisions, the General Services Division and the Essential Services Division. The Essential Services Division exercises jurisdiction over the essential services which are listed in the Second Schedule of the IRA as the Electricity Service, Water and Sewerage Services, External Communications, Fire Service, Health Services, Hospital Services, Sanitation Services, Public School Bus Service and Civil aviation services. The General Services Division has jurisdiction over all services that are not essential services, meaning that this Division deals with all labour disputes in the private sector.

The President of the Industrial Court is the Chairman of the Division of which he or she is a member. He or she must possess the qualifications required to sit as a Judge of the Supreme Court. The Vice President must be an attorney at law of not less than ten years standing, while the other members may be industrial relations practitioners, trade unionists, economists, accountants or attorneys at law of not less than five years standing. The Court possesses a mix of expertise and so its approach to matters is not strictly legal. The Court takes an all round approach to matters using its knowledge of industrial policies and practices.

Powers of the Industrial Court

The Industrial Court is deemed to be a superior court of record, possessing all powers inherent in such a court. The Court's jurisdiction and powers are set out in the IRA. First and foremost the Court may hear and determine disputes, making such award or order as it deems fair and just. The Court is not bound by the law of evidence as it applies in the Supreme Court. The Court has the power to remit a dispute to the parties or the Minister of Labour with a view towards settlement. It may act as conciliator to the parties, with their consent. It has the power of contempt, and may dismiss matters which are trivial or contrary to the public interest. Among the remedies the Court may grant, it has a statutory power to grant reinstatement or re-employment to a dismissed worker. The Court may not however make an order for costs, except for exceptional reasons.

A right of appeal lies in the Court of Appeal from a decision of the Industrial Court and may be exercised by any party to a dispute, once the appeal is brought on a point of law.

Strikes and Lockouts

Strike regulation

Industrial action is strictly regulated by the [IRA](#). Industrial action by way of strike or lockout may only be taken in respect of unresolved interest disputes, and the IRA provides that only a recognized majority union may take strike action. An employer may not take lockout action against workers who are not represented by a recognized majority union. Where either the employer or the recognized majority union intends to take such action they must give notice to the other party and to the Minister of Labour.

Strike or lockout action may only be taken in respect of unresolved disputes, which means that the Minister of Labour would have had the opportunity to instigate or encourage conciliation at the Ministry under the disputes procedure in the IRA. No strike or lockout action may be taken after parties have requested the Minister to refer the dispute to the Industrial Court for determination.

The IRA protects employees by preserving their contracts of employment where strike or lockout action is taken in conformity with the IRA. Employers are under no obligation to pay striking employees.

Unlawful strikes and lock outs

Where an employer takes lockout action contrary to the provisions of the IRA he or she is liable to a fine of \$20,000 and to pay wages to the worker for the period of the lockout. Where a union breaches the IRA it is liable to a fine of \$10,000 and may have its certificate of recognition cancelled. An employer has the option of treating the contract of a worker who participates in illegal strike action as terminated. The worker through his or her union however may apply to the Industrial Court to have the dismissal set aside.

The Industrial Court may issue a stop order on application by the Minister, prohibiting industrial action by either a recognized majority union or employer where such action poses a threat to the national interest.

Persons employed in the essential services are prohibited from taking strike action. Unresolved disputes involving these workers are referred by the Minister of Labour to the Industrial Court for settlement. Members of the Defence Force, the Civil, Prison, Fire and Teaching Services and Central Bank employees are also prohibited from taking strike action. Should any of these prohibited employees breach the IRA they are subject to fine and imprisonment.

ILO Conventions ratified by the Republic of Trinidad and Tobago

See [APPLIS \(ILO database of ratifications\)](#).

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Useful and relevant web Links

Ministry of Labour and small and micro enterprise development

Parliament of the Republic of Trinidad and Tobago

National Library and Information System Authority

Programme for the Promotion of Management - Labour Cooperation. Caribbean Labour Market Guide for Policy Makers and Investors